

PATENT

Paper No.

File: Greene-USP1-04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Inventor	:	REES, Frank L.
Serial No.	:	10/580,358
Filed	:	March 5, 2007
For	:	Gauss-Rees Parametric Ultrawideband System
Group Art Unit	:	3662
Examiner	:	LOBO, Ian J.

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MS: Petitions  
Honorable Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SECOND PETITION FOR SUSPENSION OF  
ACTION BY THE OFFICE UNDER C.F.R. §1.103(a)**

SIR:

Applicant respectfully requests suspension of action by the Office for cause: although the parent PCT application has been examined, and a Written Opinion has been issued, the PCT application has not been *properly* examined and the Search Report and Written Opinion are improper. Applicant should not be required to proceed at the national stage absent a proper PCT examination and Written Opinion.

More particularly, the above-identified patent application is a national application of a PCT application filed in 2004 with the US (PTO) as the Receiving Office. In

the PCT application, unity of invention was established. The US application seeks to impose a restriction requirement. Pursuant to Applicant's PCT treaty rights, Applicant is entitled to a proper PCT examination within the proscribed time periods and should not be forced to respond to a restriction requirement without benefit of the PCT examination.

Presently, the issue in the PCT examination is the impropriety of the Written Opinion, as set forth in the enclosed copy of the Reply or Provisional Reply To Written Opinion Of the International Searching Authority and Third Request to Invoke the Supervisory Authority. In particular, the Authorized Officer's only comment as regards two hundred and twenty nine (229) claims is that "they do not add inventive step." There is no explanation whatsoever as to why each and every one of these claims is deemed to be devoid of inventive step. Applicant requests a proper examination and a proper Written Opinion, plus an opportunity to file a Reply to the proper Written Opinion.

A showing of good and sufficient cause is further provided by enclosing a copy of the following documents: Decision mailed 18 August 2008 granting the Second Petition to Invoke the Supervisory Authority in the parent PCT application; Notification of Transmittal of the International Search Report and the Written Opinion of the International Searching Authority, or the Declaration, International Search Report, and Written Opinion of the International Searching Authority mailed 18 August 2008; Third Request to Invoke the Supervisory Authority filed September 8, 2008, in the parent PCT application requesting proper examination; and Reply or Provisional Reply To Written Opinion Of the International Searching Authority filed September 8, 2008, in the parent PCT application.

It is respectfully submitted that the Written Opinion is improper, and Applicant should not be compelled to go forward with the National examination absent a proper PCT examination.

Applicant respectfully requests suspension of this US National patent application until the parent PCT application has been properly examined and a Search Report and Written Opinion are issued.

**APPLICANT CLAIMS SMALL ENTITY STATUS.** It is believed that the delay in examination of the PCT application is the fault of the Office, such that no fee for this Petition is warranted. However, if the PTO determines otherwise, then the Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235.

Please direct all correspondence to the undersigned at the address given below.

Respectfully submitted,



Date: September 8, 2008

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Peter K. Trzyna  
(Reg. No. 32,601)

P.O. Box 7131  
Chicago, IL 60680-7131  
(312) 240-0824



## UNITED STATES PATENT AND TRADEMARK OFFICE

18 AUG 2008

Commissioner for Patents  
United States Patent and Trademark Office  
P. O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

PETER K. TRZYNA  
P.O. BOX 7131  
CHICAGO IL 60680-7131

In re Application of : DECISION  
FRANK L. REES :  
PCT No.: PCT/US04/39909 :  
Int. Filing Date: 24 November 2004 :  
Priority Date: 25 November 2003 :  
Attorney's Docket No.: GREENE-P1-04 :  
For: GAUSS-REES PARAMETRIC :  
ULTRAWIDEBAND SYSTEM :  
:

This decision is in response to applicant's "SECOND PETITION TO INVOKE THE SUPERVISORY AUTHORITY OF THE COMMISSIONER" filed 17 March 2008, which has properly been treated as a petition under 37 CFR 1.181.

**BACKGROUND**

On 29 March 2005, the United States Receiving Office (RO/US) mailed a NOTIFICATION OF THE INTERNATIONAL APPLICATION NUMBER AND OF THE INTERNATIONAL FILING DATE (Form PCT/RO/105) indicating the international filing date as 24 November 2004.

On 26 July 2007, applicant filed a "PETITION TO INVOKE THE SUPERVISORY AUTHORITY OF THE COMMISSIONER", which was properly treated as a petition under 37 CFR 1.181.

On 01 October 2007, a decision was mailed granting applicant's petition under 37 CFR 1.181. Specifically, it was noted that the search copy of the instant application could not be located after a reasonable search, that the search copy was reconstructed from the home copy, and that the search copy had been forwarded to the examiner for preparation and mailing of the ISR/US and preparation and mailing of the IPER/US.

On 17 March 2008, applicant filed the instant "SECOND PETITION TO INVOKE THE SUPERVISORY AUTHORITY OF THE COMMISSIONER".

**DISCUSSION**

The second petition under 37 CFR 1.181 again requests that the Commissioner invoke supervisory authority to require advancement of the instant application, i.e., establishment of the International Search Report/Written Opinion (ISR/US) and the International Preliminary Examiner Report (IPER/US).

The search copy has been forwarded to the examiner for preparation and mailing of the ISR/US and preparation and mailing of the IPER/US. (As of 15 August 2008, the International Search Report/Written Opinion had been prepared and was ready to be mailed.)

**CONCLUSION**

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

The home copy of the application is being forwarded to PCT Central Files for storage.

/Daniel Stemmer/

Daniel Stemmer  
Legal Examiner  
PCT Legal Affairs  
Office of Patent Cooperation Treaty  
Legal Administration  
Telephone: (571) 272-3301  
Facsimile: (571) 273-0459

# PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

To:  
**PETER K. TRZYNA**  
 P.O. BOX 7131  
 CHICAGO, IL 60680-7131

**PCT**

NOTIFICATION OF TRANSMITTAL OF  
 THE INTERNATIONAL SEARCH REPORT AND  
 THE WRITTEN OPINION OF THE INTERNATIONAL  
 SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

Date of mailing (day/month/year)	<b>18 AUG 2008</b>
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**FOR FURTHER ACTION** See paragraphs 1 and 4 below

International application No.  
**PCT/US04/39909**

International filing date  
 (day/month/year) 24 November 2004 (24.11.2004)

Applicant  
**REES, FRANK L.**

1.  The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

**Filing of amendments and statement under Article 19:**

The applicant is entitled, if he so wishes, to amend the claims of the international application (see Rule 46):

**When?** The time limit for filing such amendments is normally two months from the date of transmittal of the international search report.

**Where?** Directly to the International Bureau of WIPO, 34 chemin des Colombelettes  
 1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70.

For more detailed instructions, see the notes on the accompanying sheet.

2.  The applicant is hereby notified that an international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.

3.  With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

- the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.

- no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. **Reminders**

Shortly after the expiration of 18 months from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3; respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within 19 months from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later); otherwise, the applicant must, within 20 months from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of 30 months (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450

Facsimile No. (571) 273-3201

Authorized officer

Ian J. Lobo



Telephone No. (571) 272-6974

(See notes on accompanying sheet)

## PCT

## INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference	<b>FOR FURTHER ACTION</b>	
	see Form PCT/ISA/220 as well as, where applicable, item 5 below	
International application No. PCT/US04/39909	International filing date ( <i>day/month/year</i> ) 24 November 2004 (24.11.2004)	(Earliest) Priority Date ( <i>day/month/year</i> ) 25 November 2003 (25.11.2003)
Applicant REES, FRANK L.		
<p>This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.</p> <p>This international search report consists of a total of <u>9</u> sheets.</p> <p><input type="checkbox"/> It is also accompanied by a copy of each prior art document cited in this report.</p>		
<p>1. Basis of the Report</p> <p>a. With regard to the language, the international search was carried out on the basis of:</p> <p><input checked="" type="checkbox"/> the international application in the language in which it was filed.</p> <p><input type="checkbox"/> a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b))</p> <p>b. <input type="checkbox"/> This international search report has been established taking into account the rectification of an obvious mistake authorized by or notified to this Authority under Rule 91 Rule 43.6 bis(a)</p> <p>c. <input type="checkbox"/> With regard to any nucleotide and/or amino acid sequence disclosed in the international application, see Box No. I.</p> <p>2. <input type="checkbox"/> Certain claims were found unsearchable (See Box No. II)</p> <p>3. <input type="checkbox"/> Unity of invention is lacking (See Box No. III)</p> <p>4. With regard to the title,</p> <p><input checked="" type="checkbox"/> the text is approved as submitted by the applicant.</p> <p><input type="checkbox"/> the text has been established by this Authority to read as follows:</p> <p> </p> <p> </p> <p>5. With regard to the abstract,</p> <p><input checked="" type="checkbox"/> the text is approved as submitted by the applicant.</p> <p><input type="checkbox"/> the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.</p> <p>6. With regard to the drawings,</p> <p>a. the figure of the drawings to be published with the abstract is Figure No. 16</p> <p><input type="checkbox"/> as suggested by the applicant.</p> <p><input checked="" type="checkbox"/> as selected by this Authority, because the applicant failed to suggest a figure.</p> <p><input type="checkbox"/> as selected by this Authority, because this figure better characterizes the invention.</p> <p>b. <input type="checkbox"/> none of the figures is to be published with the abstract.</p>		

## INTERNATIONAL SEARCH REPORT

International application No.

PCT/US04/39909

## A. CLASSIFICATION OF SUBJECT MATTER

IPC: G03B 42/06( 2006.01);G01S 15/00( 2006.01)

USPC: 3677,87

According to International Patent Classification (IPC) or to both national classification and IPC

## B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 3677, 87

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)  
Inspec, East text, USPAT, EPO, Derwent, Japio, PG-Pubs

## C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
Y	US 6,418,081 A (SEN et al) 09 July 2001 (09.07.2002), see entire document	1-236
Y	US 6,034,760 A (REES) 07 March 2000 (07.03.2000), see entire document	1-236

 Further documents are listed in the continuation of Box C.

See patent family annex.

## \* Special categories of cited documents:

- "A" document defining the general state of the art which is not considered to be of particular relevance
- "E" earlier application or patent published on or after the international filing date
- "L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)
- "O" document referring to an oral disclosure, use, exhibition or other means
- "P" document published prior to the international filing date but later than the priority date claimed

later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art

documents member of the same patent family

Date of the actual completion of the international search

04 July 2008 (04.07.2008)

Date of mailing of the international search report

18 AUG 2008

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 Facsimile No. (571) 272-3201

Authorized officer

Ian J. Lobo



Telephone No. (571) 272-6974

## PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:  
PETER K. TRZYNA  
P.O. BOX 7131  
CHICAGO, IL 60680-7131

PCT

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

		Date of mailing (day/month/year) <b>18 AUG 2008</b>
Applicant's or agent's file reference		<b>FOR FURTHER ACTION</b> See paragraph 2 below
International application No. PCT/US04/39909	International filing date (day/month/year) 24 November 2004 (24.11.2004)	Priority date (day/month/year) 25 November 2003 (25.11.2003)
International Patent Classification (IPC) or both national classification and IPC IPC: G03B 42/06( 2006.01);G01S 15/00( 2006.01) USPC: 367/7,87		
Applicant REES, FRANK L.		

## 1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

## 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

## 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion 04 July 2008 (04.07.2008)	Authorized officer Ian J. Lobo Telephone No. (571) 272-6974 
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Form PCT/ISA/237 (cover sheet) (April 2007)

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/39909

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:  
 the international application in the language in which it was filed  
 a translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).
2.  This opinion has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43bis; I(a))
3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, this opinion has been established on the basis of:
  - a. type of material  
 a sequence listing  
 table(s) related to the sequence listing
  - b. format of material  
 on paper  
 in electronic form
  - c. time of filing/furnishing  
 contained in the international application as filed.  
 filed together with the international application in electronic form.  
 furnished subsequently to this Authority for the purposes of search.
4.  In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
5. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US04/39909

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims <u>1-236</u>	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-236</u>	NO
Industrial applicability (IA)	Claims <u>1-236</u>	YES
	Claims <u>NONE</u>	NO

**2. Citations and explanations:**

Claims 1-236 lack an inventive step under PCT Article 33(3) as being obvious over Sen et al in view of Rees.

Per claims 1, 115, 116 and 230, the patent to Sen et al discloses a method of identifying an object using nonlinear acoustics. The method includes directing a primary acoustic waveform at the object to produce a nonlinear acoustic effect, receiving a secondary wavelet (backscattered signals) produced by the nonlinear effect and processing the received secondary wavelet in identifying the object.

The difference between claims 1, 115, 116 and 230 and the Sen et al system is the instant claims specify producing the nonlinear acoustic effect by "using multiple projectors driven by a synthetic spectrum".

The patent to Rees (see col. 15, line 58 – col. 16, line 4) teaches increased acoustic enhancement by transmitting a synthetic spectrum waveform using a multiple set of phase locked, pulsed acoustic carrier waveforms each emitted from individual projectors.

In view of the increased acoustic enhancement taught by Rees, it would be obvious to one of ordinary skill in the art to modify Sen et al by producing of the non-linear acoustic effect by transmitting a synthetic spectrum waveform using multiple projectors. The transmission of a synthetic spectrum waveform using multiple projectors to produce the non-linear acoustic effect would not entail an inventive step.

Claims 1, 115, 116 and 230 are so rejected.

Dependent claims 2-114, 117-229 and 231-236 do not further involve an inventive step.

## NOTES TO FORM PCT/ISA/220 (continued)

The letter must indicate the differences between the claims as filed and the claims as amended. It must, in particular, indicate, in connection with each claim appearing in the international application (it being understood that identical indications concerning several claims may be grouped), whether

- (i) the claim is unchanged;
- (ii) the claim is cancelled;
- (iii) the claim is new;
- (iv) the claim replaces one or more claims as filed;
- (v) the claim is the result of the division of a claim as filed.

The following examples illustrate the manner in which amendments must be explained in the accompanying letter:

1. [Where originally there were 48 claims and after amendment of some claims there are 51]:  
"Claims 1 to 29, 31, 32, 34, 35, 37 to 48 replaced by amended claims bearing the same numbers; claims 30, 33 and 36 unchanged; new claims 49 to 51 added."
2. [Where originally there were 15 claims and after amendment of all claims there are 11]:  
"Claims 1 to 15 replaced by amended claims 1 to 11."
3. [Where originally there were 14 claims and the amendments consist in cancelling some claims and in adding new claims]:  
"Claims 1 to 6 and 14 unchanged; claims 7 to 13 cancelled; new claims 15, 16 and 17 added." or  
"Claims 7 to 13 cancelled; new claims 15, 16 and 17 added; all other claims unchanged."
4. [Where various kinds of amendments are made]:  
"Claims 1-10 unchanged; claims 11 to 13, 18 and 19 cancelled; claims 14, 15 and 16 replaced by amended claim 14; claim 17 subdivided into amended claims 15, 16 and 17; new claims 20 and 21 added."

### "Statement under Article 19(1)" (Rule 46.4)

The amendments may be accompanied by a statement explaining the amendments and indicating any impact that such amendments might have on the description and the drawings (which cannot be amended under Article 19(1)).

The statement will be published with the international application and the amended claims.

**It must be in the language in which the international application is to be published.**

It must be brief, not exceeding 500 words if in English or if translated into English.

It should not be confused with and does not replace the letter indicating the differences between the claims as filed and as amended. It must be filed on a separate sheet and must be identified as such by a heading, preferably by using the words "Statement under Article 19(1)."

It may not contain any disparaging comments on the international search report or the relevance of citations contained in that report. Reference to citations, relevant to a given claim, contained in the international search report may be made only in connection with an amendment of that claim.

### Consequence if a demand for international preliminary examination has already been filed

If, at the time of filing any amendments and any accompanying statement, under Article 19, a demand for international preliminary examination has already been submitted, the applicant must preferably, at the time of filing the amendments (and any statement) with the International Bureau, also file with the International Preliminary Examining Authority a copy of such amendments (and of any statement) and, where required, a translation of such amendments for the procedure before that Authority (see Rules 55.3(a) and 62.2, first sentence). For further information, see the Notes to the demand form (PCT/IPEA/401).

If a demand for international preliminary examination is made, the written opinion of the International Searching Authority will, except in certain cases where the International Preliminary Examining Authority did not act as International Searching Authority and where it has notified the International Bureau under Rule 66.1 bis(b), be considered to be a written opinion of the International Preliminary Examining Authority. If a demand is made, the applicant may submit to the International Preliminary Examining Authority a reply to the written opinion together, where appropriate, with amendments before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later (Rule 43 bis.1(c)).

### Consequence with regard to translation of the international application for entry into the national phase

The applicant's attention is drawn to the fact that, upon entry into the national phase, a translation of the claims as amended under Article 19 may have to be furnished to the designated/elected Offices, instead of, or in addition to, the translation of the claims as filed.

For further details on the requirements of each designated/elected Office, see the *PCT Applicant's Guide*, Volume II.

PATENT

File: Greene-P1-04

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Inventors	:	REES, Frank L.
Serial No.	:	PCT/US2004/039909
Filed	:	24 November 2004
For	:	GAUSS-REES PARAMETRIC ULTRAWIDEBAND SYSTEM
Priority Date	:	25 November 2003
Examiner	:	LOBO, Ian J.

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PCT Legal  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**THIRD PETITION TO INVOKE THE  
SUPERVISORY AUTHORITY OF THE COMMISSIONER**

SIR:

On 26 July 2007, Applicant filed a Petition to Invoke the Supervisory Authority of the Commissioner, and on 17 March 2008, Applicant filed a Second Petition to Invoke the Supervisory Authority of the Commissioner. Each document requested, pursuant to 37 CFR 1.181, the Commissioner to require advancement of this 2004 PCT case. In this application, the following has occurred.

First, on 8 March 2006, the Examiner issued an invitation to pay additional fees on grounds of multiple species (lack of unity of invention). Applicant timely filed a Protest, and it was not until 29 November 2006 that a Decision was issued, finding that the Protest was justified. The Protest Decision came after repeated telephone calls to the Office.

Second, after the Protest Decision, it was understood that the file was to be sent to the Examiner, but repeated calls to the Office did not result in examination. Thus, Applicant filed a first Petition to Invoke the Supervisory Authority of the Commissioner to seek advancement of the application, including a timely and proper examination. On October 1, 2007, the PTO granted said Petition. According to the Decision in the First Petition to Invoke

Supervisory Authority, a copy of the file had been forwarded to the Examiner. Thereafter, no examination had occurred. Applicant filed a second Petition seeking advancement of the application, including a timely and proper examination, and on 18 August 2008, the PTO granted said Petition. On 18 August 2008, the PTO mailed the Notification of Transmittal of the International Search Report and the Written Opinion of the International Searching Authority, or the Declaration, International Search Report, and Written Opinion of the International Searching Authority.

It is respectfully submitted that the Written Opinion is improper. In particular, the Authorized Officer's only comment as regards two hundred and twenty nine (229) claims is that "they do not add inventive step." There is no explanation whatsoever as to why each and every one of these claims is deemed to be devoid of inventive step. Applicant requests a proper examination and a proper Written Opinion, plus an opportunity to file a Reply to the proper Written Opinion.

Applicant notes the highly irregular proceedings in this case. There was a preposterous genus/species basis contention of lack of unity of invention in the Invitation to Pay Additional Fees. There is no such thing as genus/species in the PCT. The Invitation was overcome by a Protest and a Decision. Then there was the first of two Petitions to Invoke Supervisory Authority - simply to get examination. As noted in the Decision responsive to the first Petition, Applicant's file could not be located – highly irregular and coinciding with an apparent unwillingness to properly examine the application. After a second Petition to Invoke Supervisory Authority was filed, with the US National application already in examination and subject to a Petition to Suspend the US National application pending examination of the PCT application, the instant Written Opinion was issued: with no explanation whatsoever as to why some two hundred claims are deemed to lack inventive step.

Applicant paid for a proper PCT examination, and the fees were accepted. It is highly improper to take the money without doing the work.

The PCT Examination is therefore not a proper PCT examination, and this is not a

proper Written Opinion. Supervisory authority is requested in order to obtain examination and a Written Opinion compliant with the Protest Decision. See the enclosed Third Petition to Invoke the Supervisory Authority and a copy of the Second Petition to Suspend from the U.S. National Application.

In view of the foregoing, Applicant respectfully Petitions the Commissioner to exercise supervisory authority to require advancement of this patent application by conducting a proper examination in the above-identified application.

The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235.

Please direct all correspondence to the undersigned at the address given below.

Respectfully submitted,



Date: 8 September 2008

P.O. Box 7131  
Chicago, IL 60680-7131  
(312) 240-0824

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Peter K. Trzyna  
(Reg. No. 32,601)